United Plantations Bhd v Majlis Daerah Sabak Bernam

HIGH COURT (SHAH ALAM) — ORIGINATING MOTION NO 25–52–11 OF 2014
MOHD YAZID J
4 JULY 2017

Local Government — Rates — Annual value — Appeal — Determination of annual value and annual rate — Whether annual value valid — Whether annual rate imposed appropriate and reasonable — Whether necessary for court to consider land use category to determine annual rate — Whether to pay annual rate despite no service rendered

In November 2014, United Plantations Bhd ('the appellant') filed an originating motion pursuant to s 145 of the Local Government Act 1976 ('the Act') seeking declaration that the annual value of the appellant's holding at RM168,000 and the annual rate imposed at RM16,800 by the respondent vide letter dated 17 November 2014 were null and void. The issues arose were: (a) whether the annual value of RM168,000 was valid; (b) whether the annual rate of RM16,800 imposed on the appellant's holding was appropriate and enforceable; (c) whether it was necessary for the court to consider the land use category in determining the annual rate; and (d) whether the appellant shall pay the annual rate despite no service rendered by the respondent.

Held,

(1) Section 130(1) of the Act stipulated that the state authority was vested with the power to determine the annual value of the respondent's holding. Based on the affidavit evidence, the respondent had adduced a valuation report to justify the annual rate imposed. Therefore, the respondent had duly complied with s 130(1) of the Act in the determination of the annual value of the appellant's holding (see paras 15–16 & 18).

(2) Section 130(1) of the Act clearly gave power to the respondent to impose annual rate or rates within a local authority with the approval of the state authority. Although it was not a disputed fact that the appellant's holding was largely in the state of Perak but the rateable tax was only confined to the holding of 345 hectares which was situated within the area under the respondent's jurisdiction. Once it was established that the appellant's holding was situated within the jurisdiction of the respondent's authority, the rate imposed shall be paid by the appellant by virtue of s 146 of the Act. Therefore, any failure or refusal to pay the annual rate shall be recovered in the manner prescribed under the Act. Based on the above

reasons, the notice dated 17 November 2014 by the respondent in fixing and maintaining the annual value of the appellant's holdings at RM168,000 was valid in law (see paras 19 & 22–24).

(3) The appellant did benefit from the amenities provided by the respondent such as roads leading to appellant's holding, bus terminal, burial ground for the workers of the appellant's holding, market and others. These were amongst the services rendered either directly or indirectly to the public which invariably benefitted the appellant's holding. Therefore, the appellant's contention that its holding was no subject to annual rate was devoid of any merit (see paras 28 & 32).

(4) The appellant's holding was land planted with oil palm. There was no difference between an ordinary agricultural land and an estate land. The final output of the activities of that holding could be business in nature but the category of land use of this holding was agriculture. Therefore, the respondent had no authority to impose the rate of 10% which was for the industrial land use. The annual rate should be at the rate of 2.5% of the annual value (see paras 35–37).

[Bahasa Malaysia summary

Pada November 2014, United Plantations Bhd ('perayu') telah memfailkan satu usul pemula di bawah s 145 Akta Kerajaan Tempatan 1976 ('Akta') memohon satu deklarasi bahawa nilai tahunan pegangan perayu berjumlah RM168,000 yang ditetapkan oleh responden melalui surat bertarikh 17 November 2014 adalah terbatal dan tidak sah. Isu-isu yang dibangkitkan adalah: (a) sama ada nilai tahunan berjumlah RM168,000 adalah sah; (b) sama ada kadar tahunan berjumlah RM16,800 yang dikenakan pada pegangan perayu adalah berpatutan dan munasabah; (c) sama ada mahkamah perlu mengambil kira jenis kategori penggunaan tanah dalam menentukan kadar tahunan; dan (d) sama ada perayu perlu membayar kadar tahunan walaupun tiada kemudahan dibekalkan oleh responden.

Diputuskan

(1) Seksyen 130(1) Akta telah menetapkan bahawa pihak berkuasa negeri mempunyai kuasa untuk menentukan nilai tahunan pegangan responden. Berdasarkan afidavit keterangan, responden telah membuat laporan penilaian untuk menentukan kadar tahunan yang dikenakan adalah betul. Oleh itu, responden telah mematuhi s 130(1) Akta dalam menentukan nilai tahunan pegangan milik perayu (lihat perenggan 15–16 & 18).

(2) Seksyen 130(1) Akta dengan jelas memberi kuasa kepada responden untuk mengenakan kadar tahunan dengan kelulusan daripada pihak berkuasa negeri. Walaupun tidak menjadi pertikaian fakta yang mengatakan pegangan perayu adalah kebanyakkannya adalah di negeri

Perak tetapi kadar cukai yang boleh dikenakan hanya tertakluk kepada pegangan seluas 345 hektar dalam kawasan di bawah di bidang kuasa responden. Setelah terbukti pegangan perayu terletak dalam bidang kuasa responden, kadar yang dikenakan sepatutnya dibayar oleh perayu berdasarkan peruntukan s 146 Akta. Oleh itu, sebarang kegagalan atau ketidakmahuan bayaran kadar tahunan perlu dituntut melalui cara-cara yang telah termaktub dalam s 146 Akta. Berdasarkan sebab-sebab di atas, notis pada 17 November dalam menetapkan kadar tahunan pegangan perayu berjumlah RM168,000 adalah sah di sisi undang-undang (lihat perenggan 19 & 22–24).

(3) Perayu telah memperoleh faedah melalui kemudahan-kemudahan yang disediakan oleh responden seperti jalan raya yang menghubungkan pegangan perayu, terminal bas, kawasan bawah tanah untuk pekerja-pekerja di kawasan pegangan perayu, pasar dan lain-lain. Kemudahan-kemudahan ini adalah secara langsung dan tidak langsung memberi pulangan faedah kepada orang awam yang juga memberi manfaat kepada pegangan perayu. Oleh itu, dapatan perayu yang mengatakan pegangan perayu adalah tidak tertakluk kepada kadar tahunan adalah tidak bermerit (lihat perenggan 28 & 32).

(4) Pegangan milik perayu adalah kawasan tanaman kelapa sawit. Tiada perbezaan di antara tanah pertanian biasa dan tanah perladangan. Hasil terakhir aktiviti yang dijalankan adalah perniagaan tetapi kategori penggunaan tanah pegangan perayu adalah pertanian. Oleh itu, responden tiada kuasa dan autoriti untuk mengenakan kadar 10% yang mana adalah untuk tanah jenis perindustrian. Kadar tahunan sepatutnya dalam kadar 2.5% daripada nilai tahunan (lihat perenggan 35–37).]

Notes

For cases on annual value, see 10(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 151–158.

Cases referred to

Generation Products Sdn Bhd v Majlis Perbandaran Klang [2008] 6 MLJ 325, FC (refd)

Majlis Perbandaran Subang Jaya v The Alice Smith Schools Association [2011] 2 MLJ 442, FC (refd)

PP v Tan Tatt Eek & Other Appeals [2005] 2 MLJ 685, FC (refd)

Legislation referred to

Local Government Act 1976 ss 2, 39, 63, 72, 127, 130(1), 134, 145, 146

National Land Code s 214A(1)

Workers' Minimum Standards of Housing and Amenities Act 1990

Anand Raj (Foong Pui Chi and Jess Ngo Hui Zhong with him) (Shearn Delamore & Co) for the appellant.
Farah Nur Atiqah bt Bahari (Nazrin Nasir T Anand & Co) for the respondent.

Mohd Yazid J:

[1] In November 2014, United Plantations Bhd ('the appellant') filed an originating motion pursuant to s 145 of the Local Government Act 1976 ('the LGA') seeking declaration that the annual value of the appellant's holding at RM168,000 and the annual rate imposed at RM16,800 by the respondent vide letter dated 17 November 2014 are null and void.

[2] The court held that the annual value of the appellant's holding of RM168,000 is valid. However, the annual rate imposed must be based on the land use category, hence the court finds that the land use category of the appellant's holding is agriculture therefore the appropriate annual rate shall be 2.5%.

[3] The appellant appealed and the respondent cross-appealed against the said decision.

[4] Based on the submissions of the parties there are several issues, as follows:

(a) whether the annual value of RM168,000 is valid?

(b) whether the annual rate of RM16,800 imposed on the appellant's holding is appropriate and enforceable?

(c) to determine the annual rate is it necessary for the court to consider the land use category? and

(d) whether the appellant shall pay the annual rate despite no services rendered by the respondent?

[5] The appellant's counsel had invited this court to consider several points of law on the statutory interpretation of the relevant section of LGA, as adopted in the area of revenue law, tax and rate cases.

[6] It is well established principle of statutory interpretation that when the words in a statute have not acquired technical meaning, the natural and ordinary meaning of the words should be given effect to. This principle has been well enunciated by Justice Steve Shim in the case of *Public Prosecutor v Tan Tatt Eek & Other Appeals* [2005] 2 MLJ 685

> The primary duty of the court is to give effect to the intention of the Legislature in the words used by it. It is a well-established canon of interpretation that the intend

of the Legislature is to be gathered from the words used and that if the words used have not acquired any technical, meaning, they should be deemed to have been used in their ordinary meaning. If the word of the statute are in themselves precise and unambiguous, then no more is necessary than to expound those words in their natural and ordinary sense. The words themselves alone in such cases best declare the intent of the law giver.

[7] I find the relevant provisions of LGA applicable to this particular case do not require technical meaning as the words are easily to be understood and interpreted. The relevant provisions of the LGA will be dealt with below.

[8] The lengthy submission of the appellant's counsel on the interpretation of relevant provisions of LGA corresponding with those interpretations adopted under revenue law, tax and rate cases with the supporting authorities thereto bears no relevance to the subject matter of this case.

[9] To appreciate the issues in this case, it is of paramount importance to understand the powers, limitations, functions, duties, roles and responsibilities of a local authority as provided under the LGA.

[10] A local authority has to perform the duties and exercise the powers specified in the Act, among others, s 63 of the LGA provides that it shall have the general control and care of all places within the local authority area which has been or shall be at any time set apart and vested in the council for the use of the public or to which shall at any time have acquired a common right. It may erect and maintain public amenities.

[11] Section 72 of the LGA provides certain powers to a local authority in relation to sanitation, the erections and managing markets, lodging houses, stalls, public lavatory and abattoirs. It also has the power to safeguard and promote public health for example to take all necessary and reasonably practical measures for preventing the occurrence of any infectious communicable or preventable diseases.

[12] To carry out its duties and to provide all the public amenities the local council requires revenue.

[13] Section 39 of the LGA states that the revenue of a local authority shall consist of all taxes, rates, rents, licenses, fees, dues and other sums or charges payable to the local authority by virtue of the provision or any other written law. Thus one of the principal sources of income of the local authority is imposition of annual rate.

[14] However, there are provisions in the LGA which exempts payment of

any rates, as provided under s 134, that are not for pecuniary profit such as:

(a) public places for religious worship;

(b) licensed public burial grounds or crematoria;

(c) public schools;

(d) public places for charitable purposes; and

(e) places for the purposes of science, literature or fine arts.

[15] Firstly, s 130(1) of the LGA stipulates that the state authority is vested with the power to determine the annual value of the respondent's holding.

[16] Based on the affidavit evidence I find that the respondent has adduced a valuation report to justify the annual rate imposed in this case.

[17] Further, on the allegation of failure on the part of the respondent (Majlis) to engage the services of Jabatan Penilaian dan Perkhidmatan Harta Kerajaan ('JPPH') to obtain the valuation is not grave and fatal as nowhere in the LGA it is stated that JPPH valuation ought to be used to ascertain the annual rate (see case of *Majlis Perbandaran Subang Jaya v The Alice Smith Schools Association* [2011] 2 MLJ 442).

[18] Therefore, the respondent has duly complied with s 130(1) of the LGA in the determination of the annual value of the appellant's holding is RM168,000.

[19] On the issue of annual rate, I find that s 127 of the LGA clearly gives power to the respondent to impose the annual rate or rates within a local authority with the approval of the state authority. Section 127 reads as follows:

> 127 Power to impose rates.
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> The local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority are for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any other written law.

[20] The local authority's power to impose the annual rate is further supported by the Federal Court decision as in *Generation Products Sdn Bhd v Majlis Perbandaran Klang* [2008] 6 MLJ 325, held that 'Section 127 is the provision that empowers the local authority to impose rates ...'.

[21] Section 127 of the LGA emphasises further that the local authority can

only impose whatever rate on two conditions. Firstly, the holding is within the local authority area and secondly there is an approval by the state authority to impose the rate.

[22] Although it is not a disputed fact that the appellant's holding are largely in the state of Perak but the rateable tax is only confined to the holding of 345 hectares which is situated within the area under the respondent's jurisdiction.

[23] Once it is established that the appellant's holdings is situated within the jurisdiction of the respondent's authority, the rate imposed shall be paid by the appellant by virtue of s 146 . Therefore, any failure or refusal to pay the annual rate as imposed by the appellant shall be recovered in the manner prescribed under the LGA.

[24] Based on the above reasons, the notice dated 17 November 2014 by the respondent in fixing and maintaining the annual value of the appellant's holding at RM168,000 is valid in law.

[25] The crux of the matter is whether the appellant shall be liable to pay the annual rate of RM16,800, as imposed on the appellant's holding.

[26] The appellant contended that it is not liable to pay the annual rate because at all material times the respondent never provided any services to the said holding.

[27] The purposes of local authority is to provide amenities for the benefit and use of public at large within its territory.

[28] I am of the view that the appellant does benefit from the amenities provided by the respondent such as the roads leading to the appellant's holding, bus terminal, burial ground for the workers of the appellant's holding, market and others. These are amongst the services rendered either directly or indirectly to the public which invariably benefits the appellant's holding.

[29] On the other hand, the appellant contended that it is not liable to pay the rate imposed because at all material time it provided the services, facilities or amenities to its workers under its statutory obligations pursuant to the Workers' Minimum Standards of Housing and Amenities Act 1990. The counsel for the appellant further referred to the *Hansard* of the Dewan Rakyat which emphasised that the WMSHA 1990 is a piece of legislation which requires employers to provide various facilities and amenities for the welfare of its workers and their dependents. Therefore they do not need to pay any rate to

A the respondent because all the services and welfare of the estate workers fall under appellant's obligation.

[30] The appellant's contention and reliance on WMSHA 1990 is misplaced because the facilities and amenities rendered by the respondent is to compliment and to provide access to those facilities provided by the appellant under WMSHA 1990.

[31] Further, the definition of 'holding' under s 2 of the LGA which means to include any land, therefore I am of the view that the appellant's holding will come within the meaning of any land under the definition of holding.

[32] Therefore, the contention of the appellant that its holding is not subject to annual rate is devoid of merit.

[33] On a separate note, the court earlier had inadvertently ruled the annual rate to be 2% of the annual value, which was in fact an old rate. However, having perused the affidavits again it is now realised that the appropriate annual rate for agricultural land should be 2.5% of the annual value, as stated in First Schedule (Jadual 1) in exh MN5 of encl 14.

[34] Based on the definition, it is an undisputed fact that the holding is an agriculture estate which is fully occupied with oil palm plantation consisting an area of 345 hectares. The rate of RM168,000 is based on the valuation report that forms the basis for respondent to fix the rateable amount.

[35] The appellant's holding is land planted with oil palm. The court finds that there is no difference between an ordinary agricultural land and an estate land. Under s 214A(1) of the National Land Code, an estate is an agriculture land under one title or more with a holding a minimum 40 hectares. The final output of the activities of that holding can be business in nature but the category of land use of this holding is agriculture.

[36] Based on the finding that the land use category is agriculture, the respondent has no authority to impose the rate of 10% which is meant for industrial land use.

[37] Based on the above reasons the court hold that the annual value of RM168,000 is appropriate whereas the annual rate should be at the rate of 2.5% of the annual value instead of the 10% that being imposed.

Order accordingly.

Reported by Mohd Kamarul Anwar